

IP 05-0100-CR 1 T/F USA v Eaton
Magistrate Kennard P. Foster

Signed on 08/02/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|----------------|---|-------------------------------|
| USA, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | |
| |) | |
| EATON, DWAYNE, |) | CAUSE NO. IP05-0100-CR-01-T/F |
| |) | |
| Defendant. |) | |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|---------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CAUSE NO.: IP 05-100-CR-01 T/F |
| |) | |
| DWAYNE EATON, |) | |
| Defendant. |) | |

ENTRY AND ORDER OF DETENTION PENDING TRIAL

SUMMARY

On July 12, 2005, Dwayne Eaton ("Eaton") was charged by indictment with Conspiracy to Possess with Intent to Distribute 500 Grams or More of Cocaine, a Schedule II Narcotic Controlled Substance, in violation of Title 21, U.S.C. §§ 841(a)(1) and 846. Upon conviction, the defendant faces a minimum penalty of five (5) years' imprisonment and a maximum penalty of 40 years' imprisonment pursuant to Title 21, U.S.C. § 841(b)(1)(B)(ii).

On July 26, 2005, the defendant appeared for initial proceedings on the charge against him. The government moved for the defendant's detention pursuant to 18 U.S.C. § 3142(e) and (f)(1)(C), on the ground that the defendant is charged with a drug trafficking offense for which the maximum penalty is imprisonment for more than ten (10) years.

A detention hearing was held on August 1, 2005, when the defendant appeared in person and by counsel, Sarah L. Nagy.

The indictment gives rise to the presumptions found in 18 U.S.C. § 3142(e) that there is no condition or combination of conditions which will reasonably assure the appearance of the

defendant or the safety of the community if he were released.

The defendant, by and through counsel, conceded the applicability of the rebuttable presumptions found in 18 U.S.C. § 3142(e) that the defendant is a risk of flight and poses a serious risk of danger to the community. The defendant proffered evidence to rebut the presumptions, arguing that his family ties in Wayne County, Indiana, including his wife and child, and the absence of significant violent or drug-related criminal history, deem him a candidate reasonable for release.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The indictment charges the defendant with conspiracy to possess with intent to distribute 500 grams or more of cocaine, a Schedule II Narcotic Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(ii), and 846.

The penalty, after conviction for conspiracy to possess with intent to distribute 500 grams or more of cocaine, is a mandatory minimum sentence of five (5) years' imprisonment and a maximum of 40 years' imprisonment.

2. The Court incorporates the evidence or proffers heard during the detention hearing, as if set forth here, and admits the PSIII Report as Court's Exhibit 1, along with the document filed under seal, Government's Exhibit 1.

3. The rebuttable presumptions arise pursuant to 18 U.S.C. § 3142(e) that the defendant poses a serious risk of flight and danger to the community.

4. On the issue of detention, counsel for the defendant presented no evidence, conceded the applicability of the rebuttable presumptions, and proffered familial ties and lack of significant criminal history in support of the argument to release the defendant on pretrial

release.

5. The defendant did not rebut the presumptions that he is a serious risk of flight and a danger to the community if released. Therefore, the defendant, Dwayne Eaton, is **ORDERED DETAINED**.

6. Alternatively, assuming Eaton rebutted the presumptions, the evidence and findings set forth above which are relevant to the factors set forth in 18 U.S.C. § 3142(g) still require his detention.

The presumptions create a burden of production upon a defendant, not a burden of persuasion. The effect of the rebuttable presumptions is to shift the burden to a defendant to produce a basis for concluding that there is a condition or combination of conditions of release sufficient to reasonably assure that he will appear as required for further proceedings. Further, that the defendant will not engage in dangerous criminal activity pending trial, or be a serious risk to obstruct justice, or threaten, injure, or intimidate perspective witnesses or jurors. The Seventh Circuit has adopted the thorough reasoning of the court in *United States v. Jessup*, 757 F.2d 378, 381 (1st Cir. 1985). See *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986), and *United States v. Diaz*, 777 F.2d 1236 (7th Cir. 1985). Although most rebuttable presumptions found in the law disappear when any evidence is presented by the opponent of a presumption, the rebuttable presumptions of § 3142(e) are not such "bursting bubbles." *Jessup*, 757 F.2d at 383. Thus, even if a defendant has rebutted a presumption by producing some evidence, judicial officers should still give weight to Congress's finding and direction that repeat offenders involved in crimes of violence or drug trafficking, as a general rule, pose special risks of flight and danger to the community. *Dominguez*, 783 F.2d at 707; *Diaz*, 777 F.2d at 1238;

Jessup, 757 F.2d at 383.

7. In the presence of a presumption or when a presumption has been rebutted, the judicial officer must determine whether any condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community in deciding whether to grant the government's Motion for Detention. The United States, with respect to the risk of flight issue or whether the defendant is a risk to obstruct justice or to threaten, injure, or intimidate a prospective witness, bears the burden of proof by a preponderance of the evidence. *United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985); *United States v. Vortis*, 785 F.2d 327, 328-29 (D.C. Cir. 1986); *United States v. Fortna*, 769 F.2d 243, 250 (5th Cir. 1985); *United States v. Chimurenga*, 760 F.2d 400, 405-06 (2d Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 (8th Cir. 1985); *United States v. Himler*, 797 F.2d 156 (3d Cir. 1986). With respect to risk to the community's safety, however, the United States must prove its allegations by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Salerno*, 481 U.S. 739 (1987); *Orta*, 760 F.2d at 891. Detention can be based on a showing either of (1) dangerousness, or (2) risk of flight, risk of obstruction of justice, risk to threaten, injure, or intimidate a prospective witness. Proof of more than one is not required. *Fortna*, 769 F.2d at 249. Clear and convincing evidence is something more than a preponderance of the evidence but less than proof beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418 (1979). The standard is "reasonable assurance"; the Court cannot order detention because there are no conditions which would guarantee appearance and safety. *Orta*, 760 F.2d at 891 ; *Portes*, 786 F.2d at 765; *Fortna*, 769 F.2d at 250.

The Court then must consider the evidence presented on the issue of release or detention

weighed in accordance with the factors set forth in 18 U.S.C. §3142(g) and the legal standards set forth above.

Among the factors considered both on the issue of flight and dangerousness to the community are each defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. 18 U.S.C. § 3142(g)(3)(A). The presence of community ties and related ties has been found to have no correlation with the issue of safety of the community in general, and specifically, the risk a defendant poses to continue criminal activity, obstruct justice, or threaten, injure, or intimidate prospective non-law enforcement witnesses. *See United States v. Delker*, 757 F.2d 1390, 1396 (3d Cir. 1985); S. Rep. No. 225, 98th Cong., 1st Sess. at 24, *reprinted in* 1984 U.S.C.C.A.N. 3207-08.

8. The Court finds and concludes that the evidence demonstrates the following:

- (a) Strong evidence that the defendant is culpable and criminally responsible for possession with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of cocaine;
- (b) Evidence that the conspiracy charged was incipient an ongoing in nature based on the sophistication of the hidden compartment within the vehicle, the multi-state ties, the quantity of narcotics involved;
- (c) That the defendant has ties to Richmond, Indiana, is not convincing nor

does the proffered evidence rebut the presumptions;

(d) The defendant's apparent ties to different states as evidenced by the multi-state conspiracy charged increases his ability and likelihood to flee;

(e) The defendant's recurrent contact with law enforcement over several years includes three (3) separate arrests for drug-related offenses, at least one drug-related conviction in March 1994, and one money seizure in Phoenix, Arizona, in March 2004, that resulted in forfeiture;

(f) The totality of the evidence before the Court demonstrates by clear and convincing evidence that the defendant is a serious risk of flight if released.

The Court, having weighed the factors regarding detention in 18 U.S.C. § 3142(g) together with the totality of the evidence set forth above, concludes that if Eaton rebutted the presumptions, he, nevertheless, should be detained because he is both an unreasonable risk of flight and clearly and convincingly a danger to the community.

WHEREFORE, DWAYNE EATON is hereby committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. Upon order of this Court or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with the Court proceeding.

Dated this _____ day of _____, 2005.

Kennard P. Foster
United States Magistrate Judge
United States District Court

Distribution:

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